IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 416 of 1993

AND

CONTEMPT CASE NO : 67 of 1995

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WRIT PETITION NO : 416 of 1993

Between:

Sri Ganesh Co-operative Housing Society Limited,

TAB No.20, Office at Nizampet Village, R.R. District,

Rep. By its Secretary R. Suryanarayana.

..... PETITIONER

AND

1. The District Collector, R.R. District, Hyderabad

2. The Mandal Revenue Officer, Balanagar, R.R.District.

3. K.Kista Reddi, S/o Kolanu Narayana Reddy, R/o

Nizampet Village, Medchal Taluq, R.R. District.

4. K. Bal Reddy, S/o. K. Bal Reddy, R/o.

Nizampet Village, Medchal Taluq, R.R. District.

5. K. Janga Reddy, S/o. K. Rukka Reddy, R/o.

Nizampet Village, Medchal Taluq, R.R. District.

6. K. Sitaram Reddy, S/o K.Raji Redy,

R/o Sanjeeva Reddy Nagar Colony, Hyderabad.

7. Nagi Reddy Rama Rao, S/o not known,

R/o S.R.Nagr, Behind Police Station, Hyderabad.

8. Nagireddy Narayana Rao, S/o Not known, R/o

Kukatpally, Balanagar Mandal, R.R. District.

9. Nagi Reddy Raja Rao, S/o. Not known, R/o

SRT 7, S.R.Nagar, Near Nagarjuna College, Hyderabad.

10.Bhaskar Reddy, S/o Nagi Reddy, R/o Kukatpally Village,

Balanagar Mandal, R.R. District.

11.Lachi Raju, S/o.not known, R/o Kukatpally

Housing Board Colony, R.R. District.

12.Padma Rao, S/o Rama Rao, R/o Kukatpally Village,

R.R. District.

13.K.Kondal Rao, S/o Narayana Rao, R/o

Kukatpally Village, Balanagar Mandal, R.R. District.

14.G.Mohan Rao, S/o Yellaiah, R/o Kukatpally Village,

R.R.District.

15.J.Ramaiah, S/o not know,

16.J.Shankaraiah, S/o not known

17.K.Satyanarayana, S/o not known

18.Pedda Satyanarayana S/o not known

19.J.Sivaraj, S/o not known

20.K.Krishna, S/o not known

21.K.Rajaiah, S/o not known

(Respondents 15 to 21 are R/o Shamshiguda Village,

R.R. District.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the action of the respondents in preventing the petitioner society from making any development activities in respect of Ac.50-00 of land in Sy.Nos.part 170, part 171, part 172, 173 full, 174 full and part 175 of Bachupalli village, Qutubullapur Mandal, R.R.District, as illegal, arbitrary, without jurisdiction and contrary to G.O.M.S.No.53, M.A., dated 25.1.1983 by which, Government granted permission to petitioner to convert patta land to House plots and also being a subordinate to Government he cannot ignore Government order, also violative of principles of natural justice by issuing a Writ of Mandamus or any other appropriate Writ order, or direction.

Counsel for the Petitioner:MR.VINOD KUMAR DESHPANDE

Counsel for the Respondent Nos.1&2: GP FOR REVENUE

Counsel for the Respondent Nos.3 to 21: None.

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CONTEMPT CASE NO : 67 of 1995

Between:

Sri Ganesh Co-Operative Housing Society, Ltd rep.by its Secretary,
R.Suryanarayana, TAB No. 20,office at Niampet Village R.R. Dist

..... PETITIONER

AND

1 Purshpa Subramanayam, District Collector,
R.R. Dist Hyderabad.
2 P.S. Janardhan, Mandal Revenue Officer,
Balanagar Mandal R.R. Dist.

(other Respondents are not necessary in this case)

.....RESPONDENTS

Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 29.12.1994 passed in WPMP No.513 of 1993 in WP No.416 of 1993.

Counsel for the Petitioner:MR.VINOD KUMAR DESHPANDE

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following :

HON'BLE MR JUSTICE A. GOPAL REDDY

WRIT PETITION NO.416 OF 1993

AND

CONTEMPT CASE NO.67 OF 1995

COMMON ORDER:

C.C.No.67 of 1995 is filed alleging violation of interim orders dated 29.12.1994 passed in W.P.M.P.No.513 of 1993 in W.P.No.416 of 1993 and hence, the Writ Petition was directed to be posted along with the Contempt Case. In view of the same, both the matters are heard together and they are being disposed of together by this common order.

The facts that are necessary for disposal of these cases are briefly stated hereunder. Sri Ganesh Co-operative Housing Society Ltd., represented by its Secretary R. Suryanarayana, filed Writ Petition No.416 of 1993 claiming that respondents 3 to 6, who are pattedars of land in Sy.No.167 to 179 situated at Bachupalli Village, Qutubullapur Mandal, Ranga Reddy District, agreed to sell the land in favour of petitioner-society to an extent of Ac.50.00 out of Ac.200.00 and accordingly, the petitioner-society entered into agreements of sale with respondents 3 to 6 on 9.5.1981 and on 22.10.1981. Pursuant to the said agreements, possession of the land was delivered to the petitioner-society authorizing it to develop the land by converting the same into house plots for allotting to its members. After entering into such agreements, the petitioner-society made an application to the Government for conversion of agricultural land into non-agricultural land. Government of A.P. vide G.O.Ms.No.53, M.A., dated 25.1.1983 accorded permission to the petitioner-society for such conversion and got published the G.O. in the A.P. Gazette, dated 10.11.1983. After entering into agreements of sale with the petitioner-society, on the application filed by respondents 3 to 6, the Inspector of Survey and Land Records, Ranga Reddy District, in the presence of Taluk Surveyor, Medchal Taluk conducted the survey by Government Surveyors, fixed the boundaries, as per survey report, dated 7.11.1981. After such survey being conducted, Hyderabad Urban Development Authority ('HUDA') issued a zonal development plan with regard to lands of Bachupalli Village, in which it is mentioned that the lands in Sy.Nos.167 to 179 are patta lands of Bachupalli village. It is stated that at the time of transaction, though the Bachupalli Village was in Medchal Taluk, when the Taluks were abolished and Mandals were formed, Bachupalli Village was included in Qutubullapur Mandal. It is stated that after formation of Mandals, at the request of pattedars another survey was conducted in the year 1987 to identify and fix the boundaries and accordingly, the Assistant Director of Survey and Land Records in file No.123/PC No./242/87, dated 7.5.1987 furnished a survey report with a Tochan Map, showing that the land of Ac.50.00 purchased by the petitioner-society, in Sy.Nos. 170 (part), 171 (part), 172 (part), 173, 174 and 175 (part) of Bachupalli Village, Qutubullapur Mandal, Ranga Reddy District is a patta land. According to the petitioner-society, it made 475 housing plots, allotted and registered the same in favour of its members and they are in possession of their respective plots. While the matter stood thus, it is alleged that the second respondent-Mandal Revenue Officer, Balanagar Mandal called upon the petitioner-society not to proceed with any

developmental activities in the 50 Acres land stating that the land which falls under Balanagar Mandal is Government land. It is alleged that though the secretary of the petitioner-society approached the second respondent along with documentary evidence to show that the land is a patta land and it falls within the jurisdiction of Qutubullapur Mandal, but not Balanagar Mandal, without considering the same and without issuing any notice under Land Encroachment Act or under any other enactment, the second respondent is preventing the petitioner-society from undertaking developmental activities for construction of houses in the land in question. Questioning the action of the second respondent as illegal, arbitrary and without jurisdiction, the above Writ Petition is filed.

Pending the Writ Petition, this Court in W.P.M.P.No.513 of 1993 initially passed an interim order on 22.4.1993 directing the second respondent not to interfere with the developmental activities of the petitioner-society, if any, on the land without recourse to any rules or regulations. It was also made clear that any steps taken by the petitioner for development of the land during the pendency of the writ petition will be entirely at the risk of the petitioner-society and also subject to the result of the writ petition. The petitioner-society was also directed that the petitioner or its assignees, if any, should not make any constructions pending further orders in the petition. Later, the said order was modified by order dated 29.12.1994 permitting the members of the petitioner-society to carry on their developmental and construction activities only in the land in Sy.Nos.167 to 179 of Bachupally Village, Qutubullapur Mandal, Rangareddy District, however, they should not carry on any activity in the land in Sy.No.103 of Bagh-Ameeri Village of Qutubullapur Mandal. Alleging violation of orders dated 29.12.1994, the present Contempt Case has been filed.

Mandal Revenue Officer, Balanagar Mandal-second respondent filed counter affidavits in the Writ Petition as well as in the Contempt Case. It is stated that as per Revenue and Settlement Records, the land bearing Sy.No.103 admeasuring Ac.154.34 of Bagh Ameeri Village is classified as “Tank-bed Shikam Sarkari” land, which is also called as “Ambeer Cheruvu” and the ownership of the said land is vested with Government. It is stated that the tank is having an ayacut of 161.36 acres of land. It is stated that to substantiate the case of the petitioner-society that it purchased 50 Acres of land out of 222.00 acres from the respondents 3 to 6, no documentary proof has been submitted. Further, it is stated that the Mandal Surveyor and Revenue Inspector reported on 30.1.1991 that one Hari Babu, G.P.A. Holder of

patedars of Sy.Nos.167 to 179 of Bachupally Village and Suryanarayana, the Secretary of the petitioner-society have encroached over the land bearing Sy.No.103 of Bagh Ameeri Village over an extent of Ac.10.00, which is classified as Government tank-bed land and also plotted the area and started constructions under the garb of tentative lay out sanctioned by HUDA, and in view of the same, the second respondent requested the HUDA authorities to revoke the tentative lay out and stop the final lay out and also requested to conduct a joint inspection, but the HUDA officials failed to respond to the request of the second respondent. In 1994-95, an extent of Ac.50.00 was being cultivated through the source of Ambeer Cheruvu and when the petitioner-society tried to remove the water of the tank, the second respondent alleged to have objected and deputed the Village Assistant to put earth over the sluice and stopped the let out water from the tank. The second respondent also said to have made a reference to the Assistant Director Survey and Land Records, Rangareddy District on 21.1.1995 to settle the boundary dispute of Sy.No.103 of Bagh Ameeri and Sy.Nos.169 to 179 of Bachupally Village, who, in turn, deputed the staff for surveying the disputed boundaries, but the petitioner-society said to have threatened the staff. It is stated that since the land is submergence of the tank water, the conversion of agricultural land into non-agricultural land through G.O.Ms.No.53, dated 25.1.1983 is without inspection of site and proper enquiry and the same has to be ascertained from the Irrigation Department. It is stated that earlier respondent No.6 also encroached the land in Sy.No.103 of Bagh Ameeri Village and laid a bridge across the said land for a thorough fare, to Allwyn Employees Co-operative Housing Society and since the bridge in the land obstructed the natural flow of water, the District Collector instructed the second respondent to remove the obstructions, for which, he filed Writ Petition No.1855 of 1991. It is stated that the second respondent never violated the interim order dated 29.12.1994 passed in WPMP No.513 of 1993, but in fact, the petitioner-society under the guise of interim order, started constructions in Sy.No.103 of Bagh Ameeri Village stating that they are Sy.No.170 (Part),171 (part), 172,173,174 and 175 (Part), which are overlapping over Sy.No.103 of Bagh Ameeri Vilalge. Finally, it is stated that since there is dispute between two survey numbers i.e. Sy.No.103 of Bagh Ameeri Village and Sy.Nos.169 to 175 of Bachupally Village, unless the land is demarcated, the petitioner cannot be permitted to take up any developmental activities.

Reply affidavits have been filed by the petitioner-society reiterating the stand taken by it.

Heard Sri Vinod Kumar Deshpande, learned counsel for the petitioner-society and learned Government Pleader for Revenue.

Sri Vinod Kumar Deshpande, learned counsel for the petitioner-society contends that Bagh Ameeri Village, which is earlier constituent of Rajendranagar Taluk, was included in the Balanagar Mandal, whereas Bachupalli Village, which was earlier with Medchal Taluk, was included in Qutubullapur Mandal, and hence, the second respondent has no jurisdiction to interfere with the land in question. It is contended that in the two surveys conducted, one in the year 1981 vide file No.(P.C.366/81 and G.10/1946/1981); and the other on 7.5.1987 vide file NO.123/PCNo./242/87 the boundaries of the lands in Sy.Nos.169 to 175 were already fixed and through another survey conducted on 19.5.1993 vide file No.G7-3688/93 boundaries were again re-fixed and the fourth survey was also conducted pursuant to the orders passed in Contempt Case, but no report as such is submitted. Further, it is submitted that under Section 5 of A.P. Survey and Boundaries Act it is for the State Government to order for conducting survey of any Government land or of any boundary of such land. He submits that though this Court in Contempt Case by order dated 26.9.1995 directed the District Collector, Ranga Reddy District to conduct a joint survey, without conducting the same directed the Assistant Director, Survey & Land Records, Ranga Reddy District to conduct the survey. It is contended that in the letter addressed to the Government Pleader by the District Collector, Ranga Reddy District, dated 21.10.1995 it is stated that on his directions, the Assistant Director, Survey & Land Records, Ranga Reddy District demarcated the land in question and furnished a report together with sketch showing the overlapping of Sy.Nos.169 to 176 of Bachupalli Village of Quthbullapur Mandal over Sy.No.103 of Bagh Ameeri Village of Balanagar Mandal showing it as tank-bed land, which is different than the land claimed in the counter. He lastly submits that to resolve the controversy once for all, a joint survey with the help of officials of Revenue Department as well as Survey people of both the Mandals i.e. Balanagar and Quthbullapur, have to be conducted.

On the other hand, the learned Government Pleader contends that as directed by this Court in the Contempt Case on 26.9.1995, the Assistant Director, Survey & Land

Records, Ranga Reddy District after duly issuing notices to the parties concerned, in the presence of Secretary of the petitioner-society and Surveyors of Balanagar and Qutbullapur Mandals, conducted survey and also furnished his report to this Court dated 30.1.1996. In the report dated 30.1.1996 it is stated that the overlap area in S.No.103 of Bagh Ameeri Village, Balnagar Mandal is Ac.40.16 guntas and besides that, an extent of A.1.29 guntas of patta land of Bagh Ameeri Village in Sy.No.101 part and 102 part are also coming under overlapping by Sy.Nos.172 and 173 of Bachupally Village of Qutbullapur Mandal. It is further stated in the report that the land in Sy.Nos.171,172,173,174 and 175 which is claimed by the petitioner-society is fully under submergence in the tank-bed area, as the tank has received the water to its F.T.L. during the rainy season in October 1995. The learned Government Pleader submits that since there is no village survey, the provisions of A.P. Survey and Boundaries Act will not be applicable and survey, if any, has to be conducted under the provisions of A.P.(Telangana Area) Land Revenue Act, 1317-F.

A Division Bench of this Court in Writ Appeal No.152 of 1985, dated 5.3.1991 in the case of **JOINT COLLECTOR, RANGA REDDY DISTRICT** (ALT Vol.LXV Notes On Recent Cases 1991 (1) 50) categorically held that when a survey of the two adjoining villages was done prior to the A.P. Survey and Boundaries (Extension and Amendment) Act, 1958, under the relevant provisions of Hyderabad Land Revenue Act and if it gives rise to any controversy about the boundaries of two villages, the Joint Collector will have jurisdiction to resolve the controversy. As per Section 93 of A.P. (Telangana Area) Land Revenue Act, 1317-F, if the parties agree to refer the boundary dispute to arbitration and make an application to that effect in writing, the competent officer has to refer the case to arbitration for settlement.

As stated by the learned Government Pleader, in the survey conducted in pursuance of orders dated 26.9.1994, the Assistant Director of Survey & Land Records submitted report stating that an extent of Ac.40.16 guntas of land is overlapping in Sy.No.103 of Bagh Ameri Village, Balanagar Mandal and further, an extent of Ac.1.29 guntas of patta land of Bagh Ameeri Village in Sy.No.101 part and 102 part are also overlapping by Sy.No.172 and 173 of Bachupally Village of Qutubullapur Mandal. In view of the said overlapping, this Court cannot resolve the controversy which requires to be done after survey of both the survey numbers with their boundaries under the Hyderabad Land Revenue Act prior to extension of A.P. Survey and Boundaries Act. In view of the same the petitioner-society shall make an

application to the Joint Collector, Ranga Reddy District, within a period of two weeks from the date of receipt of a copy of this order. On such application being made, the Joint Collector shall refer the dispute to the Deputy Director of Survey and Land Records for arbitration as contemplated under Section 93 of A.P. (Telangana Area) Land Revenue Act, 1317-F. On such reference being made, the Deputy Director of Survey and Land Records after receiving the respective claims of the parties i.e. the Mandal Revenue Officer, Balanagar Mandal as well as the petitioner-society, shall resolve the said controversy and on such resolving the controversy, the parties are at liberty to enforce the award to be passed, as per the provisions of Arbitration and Conciliation Act.

The Writ Petition and the Contempt Case are accordingly disposed of. There shall be no order as to costs.

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A. GOPAL REDDY, J

15th MARCH 2005.

Tsr.

To

1. The District Collector, R.R. District, Hyderabad

2. The Mandal Revenue Officer, Balanagar, R.R.District

3 . Two C.C.s to Government Pleader for Revenue, High Court Buildings, Hyderabad.(OUT)

4. Two C.D. copies.

5. The Joint Collector, R.R. District.